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REGULATION OF MONOPOLY UNDER THE SHERMAN ANTI-TRUST ACT. — Under the sweeping terms of the Sherman law, any direct restraint of trade appeared illegal a few years ago.[1] Public service companies, especially, seemed under the ban.[2] But since the Standard Oil case, not only must the restraint of trade be unreasonable to be illegal, but the remedy provided must regard the public interest.[3] In a recent case a terminal company owned by eight of twenty-four competing railroads was found to be an illegal monopoly by reason of its size and unfair methods. *United States* v. *Terminal R. Ass'n of St. Louis*, 32 Sup. Ct. 507. The terminal company, a combination of previously competing terminals, had acquired all possible terminal facilities, but the decree provided simply that arbitrary charges cease, and any railroad applying be furnished with equal service on reasonable terms, and at the railroad's option be admitted to joint ownership and control in the terminal company. Dissolution was provided for only in case this plan failed.

The test of illegality applied was that laid down in the Standard Oil and Tobacco cases,[4] the extent of control, and the methods of obtaining and exerting that control. Since the combination was not dissolved, however, the economic advantages of size in determining reasonableness

[1] See United States *v.* Trans-Missouri Freight Association, 166 U. S. 290, 328, 17 Sup. Ct. 540, 554; United States *v.* Joint-Traffic Association, 171 U. S. 505, 571, 19 Sup. Ct. 25, 32; Northern Securities Co. *v.* United States, 193 U. S. 197, 328, 331, 24 Sup. Ct. 436, 453, 454.

[2] See United States *v.* Joint-Traffic Association, *supra.*

[3] See Standard Oil Co. *v.* United States, 221 U. S. 1, 78, 31 Sup. Ct. 502, 523.

[4] See Standard Oil Co. *v.* United States, 221 U. S. 1, 60, 31 Sup. Ct. 502, 516; United States *v.* American Tobacco Co., 221 U. S. 106, 180, 31 Sup. Ct. 632, 648.

are recognized. A combination of public service companies, far from being prohibited altogether, furnishes one of the first examples of reasonable restraint of competition. The public inconvenience incident to independent terminals in crowded cities, and the waste of duplicate equipment, make a more desirable unification difficult to imagine.[5] But it cannot yet be said that the question of monopoly is simply one of methods,[6] and not at all of size. A combination which has never exerted unfair methods may grow to such extent that competition in that field is excluded.[7] If the control thus obtained is maintained for no better economic reason than the power to do so, it would seem clearly objectionable.[8] And even if economic advantage requires the combination despite the resulting stifling of competition, it may still be declared illegal, and a decree granted similar to that in the principal case.

Regulation, instead of dissolution under the Sherman Act, is the distinct step taken in the principal case. How far this policy will be carried must be merely conjectural. The remedy of regulation will probably be cautiously applied, for, unless the public interest in its maintenance is very clear, the policy against monopoly seems to require dissolution. The considerations controlling will probably be economic, rather than social. The argument for the preservation of the small business man [9] is not of prime importance under modern business conditions, and if the combination is clearly economically desirable, it seems the public interest is protected by regulation, even as applied to businesses other than public service companies.[10] By such regulation, since the control over the market is gone, the monopoly itself may be said to disappear.

Regulation such as that enforced in the principal case seems mainly an application of public service law.[11] The obligations of businesses affected with the public interest are to serve all,[12] at reasonable rates,[13] with adequate facilities,[14] and without discrimination.[15] Only the provision for joint ownership is novel in public service law, but it seems necessary to secure equality of service. Where the public servant is controlled by a separate business which it serves, the opportunity for secret discrimination is great.[16] The growing policy against public

[5] See Bridwell *v.* Gate City Terminal Co., 127 Ga. 520, 56 S. E. 624.

[6] But see 12 COL. L. REV. 116.

[7] The reasons among others may be control over the source of supply, or cost of plant. See 25 HARV. L. REV. 73; 1 WYMAN, PUBLIC SERVICE CORPORATIONS, §§ 120 *et seq.*

[8] Dr. Miles Medical Co. *v.* John D. Park & Sons Co., 220 U. S. 373, 31 Sup. Ct. 376. See 25 HARV. L. REV. 643.

[9] See the remarks of Peckham, J., in United States *v.* Trans-Missouri Freight Association, 166 U. S. 290, 323, 17 Sup. Ct. 540, 552. But see 25 HARV. L. REV. 57; 12 COL. L. REV. 110.

[10] Regulation seems more properly to be for an administrative board in the first instance. See WYMAN, CONTROL OF THE MARKET, 262.

[11] The law of public service corporations has been urged as a solution for the trust problem. See WYMAN, CONTROL OF THE MARKET, 275; 2 WYMAN, PUBLIC SERVICE CORPORATIONS, § 1439.

[12] State *ex rel.* Lamar *v.* Jacksonville Terminal Co., 41 Fla. 377, 27 So. 225.

[13] Western Union Tel. Co. *v.* Call Publishing Co., 181 U. S. 92, 21 Sup. Ct. 561.

[14] People *ex rel.* Hunt *v.* Chicago & Alton R. Co., 130 Ill. 175, 22 N. E. 857.

[15] Messenger *v.* Pa. R. Co., 36 N. J. L. 407, 37 N. J. L. 531.

[16] See New York, N. H. & H. R. Co. *v.* Interstate Commerce Commission, 200 U. S. 361, 26 Sup. Ct. 272.

servants engaging in a collateral business has led one state, at least, to declare it illegal *per se*,[17] and the remedy of prohibition found expression in the Commodities Clause of the Hepburn Rate Law.[18] The provision for joint ownership is simply a different method of insuring against discrimination.

SUITS CONTESTING OWNERSHIP OF CORPORATE STOCK. — A share of stock in a corporation, apart from any question of the certificate, is a property right of a peculiar nature. While generally considered as personal property,[1] clearly it is not a chose in possession. On the other hand, as it secures a right to participate in profits, a voice in the management of the corporation, and a right to a share of the assets on dissolution,[2] it is considerably greater than the ordinary transitory right.[3] Hence it has sometimes been designated as "in the nature of a chose in action," [4] and the statement has even been made that "it is neither a chattel nor a chose in action." [5] The Supreme Court of Washington has recently gone to the root of the whole question, holding that in an action by a local administrator to have his name entered on the books of a domestic corporation as the owner of certain stock, substituted service on a foreign administrator having possession of the certificates gives the court jurisdiction. *Gamble* v. *Dawson*, 120 Pac. 1060.

This conclusion necessarily involves the conception of stock as a *res* having a *situs* at the domicile of the corporation. The doctrine is generally recognized that for the purpose of suits contesting its ownership the *situs* of stock is within the state creating the corporation,[6] and the same view prevails with regard to attachment.[7] For taxation purposes stock appears to have a somewhat volatile *situs*. It is taxable at the domicile of the corporation, although belonging to a non-resident, as representing the owner's interest in the property,[8] or because the state creating the corporation can fix the taxation *situs* of its stock at will.[9] And it is taxable by the state of the holder as existing there in the form of personal estate.[10] This amounts to the conclusion that the owner's in-

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[17] Central Elevator Co. *v.* People *ex rel.* Moloney, 174 Ill. 203, 51 N. E. 254; Hannah *v.* People *ex rel.* Attorney General, 198 Ill. 77, 64 N. E. 776.

[18] 34 U. S. STAT. AT LARGE, c. 3591, p. 585, FED. STAT., SUPP., 1909, 257.

[1] Russell *v.* Temple, Sup. Ct., Mass., 1798, 3 DANE'S ABR. 108. But see Price *v.* Price's Heirs, 6 Dana (Ky.) 107.

[2] Burrall *v.* Bushwick R. Co., 75 N. Y. 211.

[3] See Sargent *v.* Essex Marine Ry. Co., 26 Mass. 202.

[4] See Arnold *v.* Ruggles, 1 R. I. 165, 174.

[5] See LOWELL, TRANSFER OF STOCK, § 9. Shares are not things in action within the meaning of the English Bankruptcy Act. *Ex parte* Union Bank of Manchester, L. R. 12 Eq. 354. But see Colonial Bank *v.* Whitney, 11 App. Cas. 426.

[6] Jellenik *v.* Huron Copper Mining Co., 177 U. S. 1, 20 Sup. Ct. 559; Sohege *v.* Singer Mfg. Co., 73 N. J. Eq. 567, 68 Atl. 64.

[7] Barber *v.* Morgan, 84 Conn. 618, 80 Atl. 791. See also Masury *v.* Arkansas National Bank, 87 Fed. 381. As to attachment of certificates, see 25 HARV. L. REV. 74, 470.

[8] Matter of Bronson, 150 N. Y. 1, 44 N. E. 707.

[9] Corry *v.* Mayor, etc. of Baltimore, 196 U. S. 466, 25 Sup. Ct. 297. But see Oliver *v.* Washington Mills, 93 Mass. 268.

[10] Dwight *v.* Mayor, etc. of Boston, 94 Mass. 316; Worthington *v.* Sebastian, Treasurer, 25 Oh. St. 1.